

HOUSE BILL 297

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2004 Regular Session  
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By: **The Speaker and the Minority Leader (By Request - Administration)**

Introduced and read first time: January 27, 2004

Assigned to: Ways and Means

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 22, 2004

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CHAPTER\_\_\_\_\_

1 AN ACT concerning

2 **Office of the Comptroller - Tax Compliance - Holding Companies**

3 FOR the purpose of authorizing the Comptroller to distribute, apportion, or allocate  
4 certain tax attributes between and among two or more organizations, trades, or  
5 businesses under certain circumstances; requiring that certain interest  
6 expenses and certain intangible expenses be added to the federal taxable income  
7 of a corporation to determine Maryland modified income under certain  
8 circumstances; requiring certain corporations under certain circumstances to  
9 include with an income tax return or otherwise file with the Comptroller a  
10 certain statement regarding certain dealings and transactions with related  
11 corporations; providing for a certain tax credit under certain circumstances;  
12 providing for a certain estimated payment; allowing the Comptroller to assess  
13 interest and penalty for failure to provide the required estimated payment;  
14 requiring the Comptroller to adopt certain regulations; defining certain terms;  
15 making the provisions of this Act severable; providing for the effective date and  
16 application of this Act; and generally relating to tax administration and  
17 compliance.

18 BY adding to  
19 Article - Tax - General  
20 Section 10-109, 10-306.1, and 10-725  
21 Annotated Code of Maryland  
22 (1997 Replacement Volume and 2003 Supplement)

23 BY repealing and reenacting, with amendments,  
24 Article - Tax - General  
25 Section 10-804(e)(3)

1 Annotated Code of Maryland  
2 (1997 Replacement Volume and 2003 Supplement)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article - Tax - General**

6 10-109.

7 (A) ~~FOR ORGANIZATIONS, TRADES, OR BUSINESSES DOING BUSINESS IN THE~~  
8 ~~STATE OF MARYLAND,~~ THE COMPTROLLER MAY DISTRIBUTE, APPORTION, OR  
9 ALLOCATE GROSS INCOME, DEDUCTIONS, CREDITS, OR ALLOWANCES BETWEEN AND  
10 AMONG TWO OR MORE ORGANIZATIONS, TRADES, OR BUSINESSES, WHETHER OR NOT  
11 INCORPORATED, WHETHER OR NOT ORGANIZED IN THE UNITED STATES, AND  
12 WHETHER OR NOT AFFILIATED, IF:

13 (1) THE ORGANIZATIONS, TRADES, OR BUSINESSES ARE OWNED OR  
14 CONTROLLED DIRECTLY OR INDIRECTLY BY THE SAME INTERESTS WITHIN THE  
15 MEANING OF § 482 OF THE INTERNAL REVENUE CODE; AND

16 (2) THE COMPTROLLER DETERMINES THAT THE DISTRIBUTION,  
17 APPORTIONMENT, OR ALLOCATION IS NECESSARY IN ORDER TO REFLECT AN ARM'S  
18 LENGTH STANDARD WITHIN THE MEANING OF § 1.482-1 OF THE REGULATIONS OF  
19 THE INTERNAL REVENUE SERVICE OF THE U.S. TREASURY AND TO REFLECT  
20 CLEARLY THE INCOME OF THOSE ORGANIZATIONS, TRADES, OR BUSINESSES.

21 (B) THE COMPTROLLER SHALL APPLY THE ADMINISTRATIVE AND JUDICIAL  
22 INTERPRETATIONS OF § 482 OF THE INTERNAL REVENUE CODE IN ADMINISTERING  
23 THIS SECTION.

24 10-306.1.

25 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
26 INDICATED.

27 (2) "BANK" MEANS:

28 (I) A BANK HOLDING COMPANY AS DEFINED IN THE FEDERAL  
29 BANK HOLDING COMPANY ACT OF 1956, AS AMENDED, OR A BANK, TRUST COMPANY,  
30 SAVINGS BANK, OR SAVINGS AND LOAN ASSOCIATION INCORPORATED OR  
31 CHARTERED UNDER THE LAWS OF THIS STATE, ANOTHER STATE, OR THE UNITED  
32 STATES; OR

33 (II) A SUBSIDIARY OR AFFILIATE OF AN ENTITY DESCRIBED IN  
34 ITEM (I) OF THIS PARAGRAPH.

35 (3) "INTANGIBLE EXPENSE" MEANS:

1 (I) AN EXPENSE, LOSS, OR COST FOR, RELATED TO, OR IN  
2 CONNECTION DIRECTLY OR INDIRECTLY WITH THE DIRECT OR INDIRECT  
3 ACQUISITION, USE, MAINTENANCE, MANAGEMENT, OWNERSHIP, SALE, EXCHANGE,  
4 OR ANY OTHER DISPOSITION OF INTANGIBLE PROPERTY, TO THE EXTENT THE  
5 EXPENSE, LOSS, OR COST IS ALLOWED AS A DEDUCTION OR COST IN DETERMINING  
6 TAXABLE INCOME FOR THE TAXABLE YEAR UNDER THE INTERNAL REVENUE CODE;

7 (II) A LOSS RELATED TO OR INCURRED IN CONNECTION DIRECTLY  
8 OR INDIRECTLY WITH FACTORING TRANSACTIONS OR DISCOUNTING TRANSACTIONS;

9 (III) A ROYALTY, PATENT, TECHNICAL, OR COPYRIGHT FEE;

10 (IV) A LICENSING FEE; OR

11 (V) ANY OTHER SIMILAR EXPENSE OR COST.

12 (4) "INTANGIBLE PROPERTY" MEANS PATENTS, PATENT APPLICATIONS,  
13 TRADE NAMES, TRADEMARKS, SERVICE MARKS, COPYRIGHTS, AND SIMILAR TYPES  
14 OF INTANGIBLE ASSETS.

15 (5) "INTEREST EXPENSE" MEANS AN AMOUNT DIRECTLY OR INDIRECTLY  
16 ALLOWED AS A DEDUCTION UNDER § 163 OF THE INTERNAL REVENUE CODE FOR  
17 PURPOSES OF DETERMINING TAXABLE INCOME UNDER THE INTERNAL REVENUE  
18 CODE.

19 (6) "RELATED ENTITY" MEANS A PERSON THAT, UNDER THE  
20 ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IS:

21 (I) A STOCKHOLDER WHO IS AN INDIVIDUAL OR A MEMBER OF THE  
22 STOCKHOLDER'S FAMILY ENUMERATED IN § 318 OF THE INTERNAL REVENUE CODE,  
23 IF THE STOCKHOLDER AND THE MEMBERS OF THE STOCKHOLDER'S FAMILY OWN  
24 DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE,  
25 AT LEAST 50% OF THE VALUE OF THE TAXPAYER'S OUTSTANDING STOCK;

26 (II) A STOCKHOLDER OR A STOCKHOLDER'S PARTNERSHIP,  
27 LIMITED LIABILITY COMPANY, ESTATE, TRUST, OR CORPORATION, IF THE  
28 STOCKHOLDER AND THE STOCKHOLDER'S PARTNERSHIP, LIMITED LIABILITY  
29 COMPANY, ESTATE, TRUST, OR CORPORATION OWN DIRECTLY, INDIRECTLY,  
30 BENEFICIALLY, OR CONSTRUCTIVELY, IN THE AGGREGATE, AT LEAST 50% OF THE  
31 VALUE OF THE TAXPAYER'S OUTSTANDING STOCK; OR

32 (III) A CORPORATION OR A PARTY RELATED TO THE CORPORATION  
33 IN A MANNER THAT WOULD REQUIRE AN ATTRIBUTION OF STOCK FROM THE  
34 CORPORATION TO THE PARTY OR FROM THE PARTY TO THE CORPORATION UNDER  
35 THE ATTRIBUTION RULES OF § 318 OF THE INTERNAL REVENUE CODE, IF THE  
36 TAXPAYER OWNS DIRECTLY, INDIRECTLY, BENEFICIALLY, OR CONSTRUCTIVELY, AT  
37 LEAST 50% OF THE VALUE OF THE CORPORATION'S OUTSTANDING STOCK.

38 (7) "RELATED MEMBER" MEANS A PERSON THAT, WITH RESPECT TO THE  
39 TAXPAYER DURING ALL OR ANY PORTION OF THE TAXABLE YEAR, IS:

1 (I) A RELATED ENTITY;

2 (II) A COMPONENT MEMBER, AS DEFINED IN § 1563(B) OF THE  
3 INTERNAL REVENUE CODE; OR

4 (III) A PERSON TO OR FROM WHOM THERE IS ATTRIBUTION OF  
5 STOCK OWNERSHIP IN ACCORDANCE WITH § 1563(E) OF THE INTERNAL REVENUE  
6 CODE.

7 (B) (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, IN ADDITION  
8 TO THE MODIFICATIONS UNDER §§ 10-305 AND 10-306 OF THIS SUBTITLE, THE  
9 AMOUNTS UNDER PARAGRAPH (2) OF THIS SUBSECTION ARE ADDED TO THE  
10 FEDERAL TAXABLE INCOME OF A CORPORATION TO DETERMINE MARYLAND  
11 MODIFIED INCOME.

12 (2) THE ADDITION UNDER THIS SUBSECTION INCLUDES ANY  
13 OTHERWISE DEDUCTIBLE INTEREST EXPENSE OR INTANGIBLE EXPENSE IF THE  
14 INTEREST EXPENSE OR INTANGIBLE EXPENSE IS DIRECTLY OR INDIRECTLY PAID,  
15 ACCRUED, OR INCURRED TO, OR IN CONNECTION DIRECTLY OR INDIRECTLY WITH  
16 ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH, ONE OR MORE RELATED  
17 MEMBERS.

18 (C) THE ADDITION REQUIRED UNDER SUBSECTION (B) OF THIS SECTION DOES  
19 NOT APPLY TO ANY PORTION OF THE INTEREST EXPENSE OR INTANGIBLE EXPENSE  
20 TO THE EXTENT THAT THE CORPORATION ESTABLISHES BY CLEAR AND CONVINCING  
21 EVIDENCE, AS DETERMINED BY THE COMPTROLLER, THAT:

22 (1) THE TRANSACTION GIVING RISE TO THE PAYMENT OF THE INTEREST  
23 EXPENSE OR INTANGIBLE EXPENSE BETWEEN THE CORPORATION AND THE  
24 RELATED MEMBER DID NOT HAVE AS A PRINCIPAL PURPOSE THE AVOIDANCE OF  
25 ANY PORTION OF THE TAX DUE UNDER THIS TITLE;

26 (2) THE INTEREST EXPENSE OR INTANGIBLE EXPENSE WAS PAID  
27 PURSUANT TO ARM'S-LENGTH CONTRACTS AT AN ARM'S-LENGTH RATE OF INTEREST  
28 OR PRICE; AND

29 (3) (I) DURING THE SAME TAXABLE YEAR, THE RELATED MEMBER  
30 DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED THE INTEREST EXPENSE  
31 OR INTANGIBLE EXPENSE TO A PERSON WHO IS NOT A RELATED MEMBER, ~~THE~~  
32 ~~INTEREST EXPENSE OR INTANGIBLE EXPENSE~~;

33 (II) 1. THE RELATED MEMBER WAS SUBJECT TO A TAX  
34 MEASURED BY ITS NET INCOME OR RECEIPTS IN THIS STATE ~~AND OTHER STATES OR~~  
35 ~~POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS~~, IN ANOTHER STATE OR  
36 POSSESSION OF THE UNITED STATES, OR IN A FOREIGN NATION THAT HAS ENTERED  
37 INTO A COMPREHENSIVE TAX TREATY WITH THE UNITED STATES GOVERNMENT;

38 2. A MEASURE OF THE TAX IMPOSED BY THIS STATE ~~AND~~  
39 ~~OTHER STATES OR POSSESSIONS OF THE UNITED STATES OR FOREIGN NATIONS~~, BY  
40 ANOTHER STATE OR POSSESSION OF THE UNITED STATES, OR BY A FOREIGN NATION



1           (2)     EVEN IF THE PAYMENT IS NOT INCLUDED IN THE RELATED  
2 MEMBER'S INCOME FOR PURPOSES OF A COMBINED OR CONSOLIDATED RETURN  
3 FILED IN ANOTHER JURISDICTION, THE MEASURE OF THE TAX IMPOSED BY THAT  
4 JURISDICTION INCLUDES THE INTEREST EXPENSE OR INTANGIBLE EXPENSE FOR  
5 PURPOSES OF SUBSECTION (C)(3) OF THIS SECTION IF:

6           (I)     THE INCOME OF THE CORPORATION THAT PAID, ACCRUED, OR  
7 INCURRED THE EXPENSE IS INCLUDED IN THE COMBINED OR CONSOLIDATED  
8 RETURN THAT ALSO INCLUDES THE RELATED MEMBER; AND

9           (II)    THE PAYMENT IS NOT DEDUCTED BY THE PAYOR  
10 CORPORATION FOR PURPOSES OF THE COMBINED OR CONSOLIDATED RETURN.

11     ~~(D)~~     (F)     THIS SECTION MAY NOT BE CONSTRUED:

12           (1)     TO REQUIRE A CORPORATION TO ADD TO ITS NET INCOME MORE  
13 THAN ONCE ANY AMOUNT OF INTEREST EXPENSE OR INTANGIBLE EXPENSE THAT  
14 THE CORPORATION PAYS, ACCRUES, OR INCURS TO A RELATED MEMBER; OR

15           (2)     TO LIMIT OR NEGATE ANY OTHER AUTHORITY PROVIDED TO THE  
16 COMPTROLLER UNDER THIS ARTICLE, INCLUDING:

17           (I)     THE AUTHORITY TO MAKE ADJUSTMENTS UNDER § 10-109 OR §  
18 10-402(D) OF THIS TITLE; OR

19           (II)    THE AUTHORITY TO ENTER INTO AGREEMENTS AND  
20 COMPROMISES OTHERWISE ALLOWED BY LAW.

21     ~~(E)~~     (G)     THE COMPTROLLER SHALL ADOPT ANY REGULATIONS THAT ARE  
22 NECESSARY OR APPROPRIATE TO IMPLEMENT THIS SECTION.

23 10-725.

24     (A)     (1)     IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
25 INDICATED.

26           (2)     "PAYEE ~~CORPORATION~~" MEANS A ~~CORPORATION~~ PERSON THAT HAS  
27 RECEIVED PAYMENTS OF ROYALTIES, INTEREST, OR SIMILAR INCOME FROM  
28 INTANGIBLES FROM A RELATED MEMBER.

29           (3)     "RELATED MEMBER" HAS THE SAME MEANING AS SET FORTH IN §  
30 10-306.1 OF THIS TITLE.

31     (B)     A PAYEE ~~CORPORATION~~ MAY CLAIM THE CREDIT DESCRIBED IN  
32 SUBSECTION (C) OF THIS SECTION IF, FOR THE SAME TAXABLE YEAR, THE RELATED  
33 MEMBER THAT PAID TO THE PAYEE ~~CORPORATION~~ THE ROYALTIES, INTEREST, OR  
34 SIMILAR INCOME FROM INTANGIBLES:

35           (1)     IS SUBJECT TO THE ADDITION MODIFICATION SET FORTH IN §  
36 10-306.1 OF THIS TITLE; AND

1 (2) PAID TO THE COMPTROLLER THE FULL AMOUNT OF MARYLAND  
2 CORPORATION INCOME TAX DEVELOPED ON THE MARYLAND INCOME TAX RETURN  
3 ON WHICH THE ADDITION MODIFICATION SET FORTH IN § 10-306.1 OF THIS TITLE  
4 WAS INCLUDED.

5 (C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, THE AMOUNT OF  
6 THE CREDIT ALLOWED UNDER SUBSECTION (B) OF THIS SECTION IS EQUAL TO THE  
7 MARYLAND INCOME TAX LIABILITY OF THE RELATED MEMBER THAT PAID THE  
8 ROYALTIES, INTEREST, OR SIMILAR INCOME FROM INTANGIBLES TO THE PAYEE  
9 CORPORATION, AS COMPUTED ON ITS MARYLAND INCOME TAX RETURN FILED WITH  
10 THE COMPTROLLER, REDUCED BY THE MARYLAND INCOME TAX LIABILITY OF THE  
11 RELATED MEMBER THAT PAID THE ROYALTIES, INTEREST, OR SIMILAR INCOME  
12 FROM INTANGIBLES TO THE PAYEE CORPORATION, COMPUTED WITHOUT REGARD  
13 TO THE ADDITION MODIFICATION REQUIRED IN § 10-306.1 OF THIS TITLE.

14 (2) (I) FOR ANY TAXABLE YEAR, THE CREDIT ALLOWED UNDER THIS  
15 SECTION MAY NOT EXCEED THE STATE INCOME TAX LIABILITY OF THE PAYEE FOR  
16 THAT TAXABLE YEAR, CALCULATED BEFORE THE APPLICATION OF THE CREDIT  
17 ALLOWED UNDER THIS SECTION AND THE CREDITS ALLOWED UNDER §§ 10-701 AND  
18 10-701.1 OF THIS SUBTITLE BUT AFTER APPLICATION OF ANY OTHER CREDITS  
19 ALLOWED UNDER THIS SUBTITLE.

20 (II) THE UNUSED AMOUNT OF THE CREDIT FOR ANY TAXABLE YEAR  
21 MAY NOT BE CARRIED OVER TO ANY OTHER TAXABLE YEAR.

22 (D) THE COMPTROLLER SHALL BY REGULATION PROVIDE FOR THE  
23 APPLICATION OF THE CREDIT UNDER THIS SECTION IN THE CASE OF A PAYEE THAT  
24 IS AN S CORPORATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, OR OTHER  
25 ENTITY TREATED AS A PARTNERSHIP FOR TAX PURPOSES.

26 10-804.

27 (e) Each person required under this subtitle to file an income tax return or  
28 estimated income tax declaration or return shall:

29 (3) attach to an income tax return or otherwise file with the Comptroller  
30 any records or statements that the Comptroller requires, including:

31 (i) for an individual who has income tax withheld from salary,  
32 wages, or other compensation for personal services, or other payments, a copy of the  
33 statement from the person who withholds the tax that states:

34 1. the amount of salary, wages, or other compensation for  
35 personal services paid and the income tax withheld; or

36 2. the amount of payments made and the income tax  
37 withheld; [and]

38 (ii) a copy of the federal income tax return:

1. for a corporation; and
2. if the Comptroller requests, for an individual; AND

(III) IF THE COMPTROLLER REQUESTS, FOR A CORPORATION THAT IS A MEMBER OF AN AFFILIATED GROUP OR CONTROLLED GROUP UNDER § 1504 OR § 1563 OF THE INTERNAL REVENUE CODE, A STATEMENT OF ALL INTERMEMBER COSTS OR EXPENSES AND ALL INTERMEMBER SALES, EXCHANGES, OR OTHER TRANSACTIONS INVOLVING TANGIBLE OR INTANGIBLE PROPERTY FOR THE TAXABLE YEAR.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) all corporations required to make the addition to federal taxable income set forth in § 10-306.1 of the Tax - General Article shall make estimated tax payments under § 10-821 of the Tax - General Article that reflect any increased Maryland corporation income tax liability resulting from the addition; and

(b) notwithstanding the provisions of §§ 13-602 and 13-702 of the Tax - General Article, with respect to those corporations required to make the addition to federal taxable income set forth in § 10-306.1 of the Tax - General Article, for all taxable years beginning in calendar year 2004 only, the payment of 110% or more of the tax paid for the prior taxable year, reduced by the credit allowed under § 10-703 of the Tax - General Article, does not preclude the Comptroller from assessing:

(1) interest, under § 13-602 of the Tax - General Article, on unpaid tax; and

(2) penalty, under § 13-702 of the Tax - General Article, on underestimated tax.

SECTION 3. AND BE IT FURTHER ENACTED, That if any provision this Act or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are declared severable.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2004, and shall be applicable to all taxable years beginning after December 31, 2003.



